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RHEHNSC/NSC WASHDC PRIORITY  
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UNCLAS SECTION 01 OF 02 PRAGUE 000074

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E.O. 12958: N/A

TAGS: [PREL](#) [PGOV](#) [MASS](#) [MARR](#) [EZ](#)

SUBJECT: FIFTH VISIT OF STATUS OF FORCES NEGOTIATION TEAM  
TO PRAGUE

REF: PRAGUE 37

11. (SBU) SUMMARY AND COMMENT: Ambassador Jackson McDonald and an interagency delegation met with representatives of the Czech Government in Prague to continue negotiations on a supplemental Status of Forces Agreement (SOFA) on January 27-30 and on the Ballistic Missile Defense Agreement on January 31. Acting Under Secretary John Rood will continue the BMDA round on February 7 (septel). The pace of the SOFA round was much slower than previous meetings, most likely due to significant differences of opinion on a few basic legal principles rather than a deliberate Czech attempt to slow negotiations because of external influences such as Poland. While progress was made on a few SOFA articles (most notably on taxation) and one article was finalized, the pace was further disrupted when the Czechs introduced new language to previously agreed text and significantly walked back agreed-upon language on environmental protection.

12. (SBU) SUMMARY AND COMMENT CONTINUED: The Czechs maintain their position that the SOFA be limited to the radar site and repeated their refrain that The Czech parliament would not ratify a broad-based SOFA. They escalated this point during this round, saying they were not sure a broad SOFA would even pass government review. As we expected, the Green Party appears to have punched above its weight during the Czech State Security Council meeting on January 17 which resulted in a hard line on Czech environmental protection language in both the SOFA and the BMD agreement. Other areas of concern remaining include language demanding compliance with, versus respect for, Czech laws and procedures; criminal jurisdiction; construction permits; and claims. The two sides agreed to hold a series of expert meetings to discuss difficult issues before the next formal round of SOFA negotiations in early March. END SUMMARY AND COMMENT.

CZECHS HOLD THE LINE

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13. (SBU) Ministry of Defense Director of Defense Policy and Strategy Ivan Dvorak wasted no time in outlining his updated negotiating mandate from the State Security Council. In order for the government to accept the SOFA, it must have a clear linkage to the radar site. This includes specific mention in the title and in the scope and purpose article. Invoking European Commission law, Dvorak said he had no flexibility on the new environmental language, in which the U.S. would be required to return the radar site to the Czechs in pristine natural condition, and that the agreement would not pass governmental (i.e. not just parliamentary) approval without it. Ambassador McDonald stated that the U.S. couldnot accept the proposed text but

offered to participate in a bilateral meeting of environmental experts in an attempt to craft mutually acceptable language.

14. (SBU) The Czechs maintained their inflexibility on the need for the U.S. to comply with Czech laws and regulations, as opposed to the U.S. position of respecting such laws and regulations. This basic disagreement resurfaced throughout the draft agreement and was the focus of occasionally difficult negotiations, e.g., on building permits and construction procedures. While the U.S. fully intends to respect the laws of the Czech Republic, the U.S. relies on the international legal precedent that sovereigns do not subordinate themselves by complying with the laws of other sovereigns. In an attempt to overcome the Czechs' limited experience with this principle, Ambassador McDonald offered to provide a new construction text with commentary explaining U.S. legal reasoning behind the use of respect versus comply.

#### ONE STEP FORWARD, TWO STEPS BACK

15. (SBU) Ambassador McDonald remarked early in negotiations that the Czech text first delivered January 23 and again presented during the negotiations substantially changed some articles we thought had been previously agreed, including the entire article on environment. He also noted the substantive change in the Czech-provided working draft of the word "by" to "in" as it related to obtaining Czech construction permits. Dvorak apologized for what he characterized as this inadvertent typo, but went on to describe the importance of this change as it related to U.S. compliance with Czech law. Ambassador McDonald made it clear he would have to report to Washington that negotiations had regressed since the last round in

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December. Dvorak was surprised by this exchange, saying there was no regression and the new text was provided to clarify the issues. Despite this claim, he then repeated the Czech redline that the SOFA be specifically tied to the radar site.

#### GENERAL O'REILLY WELL-RECEIVED

16. (SBU) Missile Defense Agency Deputy Director Major General Patrick O'Reilly gave a briefing on January 28 to an audience of senior MFA and MoD policymakers on ballistic missile defense execution plans and the proposed radar's integration with a future NATO missile defense system. The General's briefing was well-received and was the first time many present had heard about the proposed radar's planned integration with NATO and how it has the potential to increase the effectiveness of existing short and medium-range missile defense systems. Deputy Foreign Minister Tomas Pojar raised the question of ballistic missile defense priorities when he asked how the system would function if missiles were heading to both Prague and Rome and only one interceptor remained. MG O'Reilly noted the system's response depends on the execution plan and explained in detail how execution plans are developed, tested, and wargamed. He said that those countries participating in the U.S. ballistic missile defense system would have a seat at the table during the development of the execution plans, which reassured the Czechs.

#### LABOR EXPERTS WORK

17. (SBU) In parallel with the SOFA negotiations, Deputy Under Secretary of Defense Patricia Bradshaw and a team of labor

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experts exchanged information with their Czech counterparts and developed a series of non-papers of possible language for use by the negotiating teams. This model of cooperation worked extremely well, and both sides made significant progress in understanding the relevant laws, positions, and

complexities involved in the SOFA labor article.

#### NEXT STEPS

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¶8. (SBU) McDonald and Dvorak agreed that many of the issues remaining are complicated and that drafting language for some of these issues at the table is nearly impossible. McDonald offered, and Dvorak accepted, a series of expert meetings using the labor discussions as a model. The parties will work with the Embassy to schedule expert discussions on taxes, criminal jurisdiction, and the environment before the next round of negotiations.

¶9. (SBU) This cable was cleared by Ambassador McDonald.  
Graber